

DIRECT TESTIMONY**OF DAWN M. HIPPI****ON BEHALF OF****THE SOUTH CAROLINA OFFICE OF REGULATORY STAFF****DOCKET NO. 2020-263-E****IN RE: CHEROKEE COUNTY COGENERATION PARTNERS, LLC,****COMPLAINANT/PETITIONER VERSUS DUKE ENERGY PROGRESS, LLC****AND DUKE ENERGY CAROLINAS, LLC, DEFENDANT/RESPONDENT**

Q. PLEASE STATE YOUR NAME, BUSINESS ADDRESS AND OCCUPATION.

A. My name is Dawn M. Hipp. My business address is 1401 Main Street, Suite 900, Columbia, South Carolina 29201. I am employed by the State of South Carolina as the Chief Operating Officer of the Office of Regulatory Staff (“ORS”).

Q. PLEASE STATE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE.

A. I received my bachelor’s degree in political science from Minnesota State University - Moorhead. Prior to my employment with ORS, I managed the financial, operations and regulatory aspects for an environmental company that provided turn-key hazardous waste consulting services for the United States Department of Defense.

In 2004, I joined ORS as a Program Specialist for the Water and Wastewater Department. I became a Director in 2007, and in 2018, was promoted to the position of Chief Operating Officer with responsibility for all ORS operational functions within the following divisions: Energy Office; Utility Rates and Services; Telecommunications; Consumer Services; and Safety, Transportation, and Emergency Response.

1 **Q. HAVE YOU PREVIOUSLY TESTIFIED BEFORE THE PUBLIC SERVICE**
2 **COMMISSION OF SOUTH CAROLINA (“COMMISSION”)?**

3 **A.** Yes. I have testified on numerous occasions before the Commission relating to
4 general rate cases, consumer complaints and other proceedings.

5 **Q. WHAT IS THE MISSION OF THE OFFICE OF REGULATORY STAFF?**

6 **A.** ORS represents the public interest as defined by the South Carolina General
7 Assembly as follows:

8 [T]he concerns of the using and consuming public with respect to public
9 utility services, regardless of the class of customer, and preservation of
10 continued investment in and maintenance of utility facilities so as to provide
11 reliable and high-quality utility services.

12 **Q. PLEASE EXPLAIN HOW YOUR DIRECT TESTIMONY AND PARTICIPATION**
13 **IN THIS PROCEEDING REPRESENT THE PUBLIC INTEREST.**

14 **A.** My direct testimony and participation in the contract negotiation dispute
15 (“Complaint”) between Cherokee County Cogeneration Partners, LLC (“Cherokee”) and
16 Duke Energy Carolinas, LLC and Duke Energy Progress, LLC (collectively “the
17 Companies” or “Duke Energy”) are brief and limited to assure the customers of Duke
18 Energy do not pay more than the appropriate Commission-approved avoided energy and
19 avoided capacity costs for the power purchased from Cherokee under the terms of a
20 successor power purchase agreement (“PPA”). The cost of purchased power is passed
21 through directly to all classes of customers (without markup) as fuel costs pursuant to S.C.
22 Code Ann. § 58-27-865 (“Fuel Adjustment Clause”). In accordance with the Fuel
23 Adjustment Clause, Duke Energy may recover from customers prudently incurred costs for

1 power purchased including avoided costs under the Public Utility Regulatory Policy Act
2 of 1978 (“PURPA”) from a qualifying facility (“QF”) such as Cherokee. PURPA provides
3 QFs the right to interconnect with the Companies’ electrical grid and requires Duke Energy
4 to purchase the QF’s energy and capacity at “avoided cost.” Avoided costs are the
5 incremental costs to an electric utility of electric energy or capacity which, but for the
6 purchase from the QF, the electric utility would generate itself or purchase from another
7 source.¹ The Companies’ customers will pay for the energy and capacity at avoided costs.

8 **Q. DOES ORS PARTICIPATE IN THE CONTRACT NEGOTIATIONS BETWEEN**
9 **QUALIFYING FACILITIES AND ELECTRIC UTILITIES?**

10 **A.** No. Typically, ORS does not engage in purchased power contract negotiations
11 between QFs and electric utilities. The outcome of successful purchased power
12 negotiations results in a PPA filed with the Commission in accordance with Commission
13 Order Nos. 81-214 and 85-347 and S.C. Code Ann. § 58-41-20(E)(1). ORS reviews PPAs
14 filed with the Commission. In addition, during the annual Fuel Adjustment Clause
15 proceedings, ORS reviews the negotiated and standard offer PPAs to verify the fuel costs
16 recorded by the electric utility are accurate and reflect the appropriate avoided costs.
17 Should the QF and electric utility require assistance to resolve a dispute, the interested
18 parties may request ORS to facilitate an informal dispute resolution process. An entity with
19 a complaint related to contract negotiations may file a complaint and seek a determination
20 from the Commission.

¹ 18 C.F.R. § 292.304(a)(2).

Q. WHEN DID ORS BECOME AWARE OF THE CONTRACT NEGOTIATION DISPUTE BETWEEN CHEROKEE AND DUKE ENERGY?

A. It is my understanding that ORS became aware of the contract dispute on November 2, 2020, when Cherokee filed the Complaint with the Commission in this docket. Upon review of the Complaint, ORS discussed the Complaint with representatives of Cherokee and Duke Energy. In addition, ORS participated in a mediation session on February 26, 2021. The mediation did not resolve the contract dispute between Cherokee and Duke Energy.

Q. PLEASE EXPLAIN THE LIMITED REVIEW PERFORMED BY ORS IN THIS COMPLAINT.

A. Cherokee requested the Commission consider and determine the following:

1. Find and conclude that Duke Energy did not engage in free, open and good faith negotiations.
2. Determine the avoided costs during the hearing of the complaint.
3. Resolve the issues necessary to facilitate a PPA between Cherokee and Duke Energy.
4. Resolve the issues consistent with Cherokee's positions; and
5. Provide interim relief in the form of continuation of payments from Duke Energy to Cherokee under the existing PPA until the Commission issues a ruling on the complaint.

ORS's review and participation are specifically limited to two (2) of the requests made by Cherokee in the Complaint. ORS reviewed the Complaint, testimony and discovery responses and focused on the impact of any decision(s) the Commission may make on all customer classes related to: 1) the appropriate avoided energy and avoided capacity costs

1 applicable in a successor PPA, and 2) the impact of the extensions of the current PPA on
2 Fuel Costs. ORS determined that the interests of all classes of customers were not reflected
3 in the other matters identified by Cherokee in the Complaint. Therefore, ORS takes no
4 position and renders no opinion on the negotiation process, the date upon which a legally
5 enforceable obligation was established, and the applicability of the form, structure and term
6 of the successor PPA to be filed with the Commission.

7 **Q. PLEASE EXPLAIN ORS'S RECOMMENDATION RELATED TO THE**
8 **APPROPRIATE AVOIDED ENERGY AND AVOIDED CAPACITY COSTS.**

9 **A.** ORS recommends the successor PPA for Cherokee reflect avoided energy and
10 avoided capacity rates calculated based on the methodology approved by the Commission.
11 PURPA does not require Duke Energy to pay a QF more than it would otherwise cost to
12 generate the power itself or purchase power from another source at the avoided cost.² The
13 customers of Duke Energy will pay directly for purchased power costs. Therefore,
14 customers should not pay more for power purchased from QFs. From the perspective of
15 the customer, the "ceiling" for energy and capacity payments to a QF is one that is based
16 on Duke Energy's actual avoided costs. Currently, Duke Energy's customers are paying
17 significantly more than Duke Energy's actual avoided costs under the extensions of the
18 2012 PPA with Cherokee.

² 18 C.F.R §§ 292.101 (b)(6) and 292.304 (a)(2) & (b)(2).

1 ORS recommends the successor PPA between Cherokee and Duke Energy limit
2 payments made to Cherokee for energy and capacity at or below the actual avoided costs
3 calculated based on the methodology approved by the Commission.

4 **Q. PLEASE EXPLAIN ORS'S RECOMMENDATION RELATED TO THE**
5 **EXTENSIONS OF THE CURRENT PPA BETWEEN CHEROKEE AND DUKE**
6 **ENERGY.**

7 **A.** The Commission approved two (2) temporary extensions of the current PPA
8 between Cherokee and Duke Energy for the time period of January 1 through August 28,
9 2021.³ ORS objected to the most recent temporary extension of the current PPA due to the
10 absence of proper safeguards to protect Duke Energy customers from increased purchased
11 power costs. In the event the Commission determines that going forward the price paid by
12 Duke Energy to Cherokee for the power generated by Cherokee is less than the price paid
13 under the 2012 PPA, ORS recommends the dollar amount attributed to the incremental
14 overpayment to Cherokee due to the extension of the terms of the current 2012 PPA be
15 credited or refunded to Duke Energy customers in a manner determined by the
16 Commission. The credit or refund to customers can be accomplished through lower
17 payments to Cherokee under the successor PPA. It is important to note that because
18 Cherokee is not under the jurisdiction of the Commission, the customers of Duke Energy
19 may bear the entire burden of the overpayment to Cherokee if a successor PPA is not
20 reached between Cherokee and the Companies. As stated in Duke Energy's letter filed

³ Commission Order Nos. 2020-846 and 2021-294.

1 April 20, 2021, Duke Energy's customers will have paid close to \$1,000,000 over the
2 current avoided cost rates when the first 2012 PPA extension expired on April 30, 2021.
3 The estimate of the overpayment is not insignificant and neither Duke Energy nor its
4 customers should be harmed if the Commission ultimately determines the rates to be paid
5 to Cherokee under a new PPA are less than the current 2012 PPA. It is ORS's position that
6 Cherokee should bear the economic risk of any extensions of the current 2012 PPA.

7 Furthermore, ORS reserves its rights to review and examine the amount of any
8 overpayment and the payment amount, terms, and conditions of any successor PPA. ORS
9 may make recommendations to protect customers in any future proceeding where the costs
10 for purchased power may be recovered.

11 **Q. WILL YOU UPDATE YOUR DIRECT TESTIMONY BASED ON INFORMATION**
12 **THAT BECOMES AVAILABLE?**

13 **A.** Yes. ORS reserves the right to revise its recommendations via supplemental testimony
14 should new information not previously provided by Duke Energy, Cherokee, or other
15 sources become available.

16 **Q. DOES THIS CONCLUDE YOUR DIRECT TESTIMONY?**

17 **A.** Yes, it does.